



New South Wales

Shops (Trading Hours) Regulation 1997

under the

Factories, Shops and Industries Act 1962

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Factories, Shops and Industries Act 1962*.

JEFFREY SHAW, Q.C., M.L.C.,

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to repeal and remake, without substantial alteration, the *Shops (Trading Hours) Regulation 1992*.

The new Regulation:

- (a) prescribes the trades that are, for the purposes of Part 4 (Restriction of hours of trade or work in certain industries) of the *Factories, Shops and Industries Act 1962*, taken to be those usually carried on in specified classes of shops (clause 5), and
- (b) classifies all shops other than scheduled shops as general shops for the purposes of the definition of that term in section 78 of the Act (clause 6), and
- (c) prescribes the manner in which an application for exemption from any or all of the provisions of Division 3 (Opening and closing hours of shops and warehouses) of Part 4 of the Act, and of the regulations made for the purposes of that Division, may be made, the time within which it may be made, the fee that must accompany the application and the time and manner in which an appeal against a determination of such an application may be made (clause 7), and

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Explanatory note

- (d) prescribes the way in which certain goods may be partitioned off from each other in mixed shops (clause 8), and
- (e) provides for technical matters (clauses 14 and 9).

This Regulation is made under the *Factories, Shops and Industries Act 1962* and, in particular, under sections 78 (1), 78A (2) and (10), 82 (1) (a) and 102 (the general regulation-making power relating to Part 4).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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1 Name of Regulation

This Regulation is the *Shops (Trading Hours) Regulation 1997*.

2 Commencement

This Regulation commences on 1 September 1997.

3 Definition

In this Regulation:

the Act means the *Factories, Shops and Industries Act 1962*.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

5 Trades taken to be usually carried on in certain shops

In respect of each class of shops specified in Schedule 1:

- (a) the trade that consists primarily of the sale of goods of a kind specified in that Schedule in respect of that class of shops is, for the purposes of Part 4 of the Act, taken to be the trade usually carried on in that class of shops, and
- (b) no other trade is to be taken to be a trade usually carried on in that class of shops.

6 General shops

For the purposes of the definition of *generalshop* in section 78 (1) of the Act, all shops (other than scheduled shops) are classified as general shops.

7 Exemption from Division 3 of Part 4 of the Act

- (1) An application under section 78A (1) of the Act:
 - (a) must be in writing, and

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- (b) must specify whether the exemption is sought:
 - (i) from all of the provisions of Division 3 of Part 4 of the Act and of the provisions of the regulations made for the purposes of that Division, or
 - (ii) from such provisions only of that Division or of those regulations as are specified in the application, and
 - (c) must specify the grounds on which the exemption is sought.
- (2) The fee to accompany an application under section 78A (1) of the Act is \$50.
 - (3) For the purposes of section 78A (10) of the Act, an appeal by a shopkeeper or occupier of a shop to the Industrial Relations Commission in Court Session against a determination of the Director-General is to be made:
 - (a) in accordance with the Industrial Relations Commission Rules 1996, and
 - (b) within the time specified in those Rules.

8 Partitioning off of goods in mixed shops

- (1) For the purposes of section 82 of the Act, the prescribed manner of partitioning off goods is by enclosing the goods behind a partition that is constructed from strong and durable materials and is of sufficient height to prevent access from the part of the shop that is kept open.
- (2) The Director-General may from time to time approve materials for use in the construction of partitioning, and the dimensions of partitions to be used, for purposes of this clause.
- (3) A partition that is constructed from approved materials and is of approved dimensions is taken to comply with the requirements of subclause (1).

9 Repeal

- (1) The *Shops (Trading Hours) Regulation 1992* is repealed.

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- (2) Any act, matter or thing that, immediately before the repeal of the *Shops (Trading Hours) Regulation 1992*, had effect under that Regulation continues to have effect under this Regulation.
- (3) In any award, agreement, order or determination in force under the *Industrial Relations Act 1996* immediately before the commencement of this Regulation, a reference to a class of shops referred to in:
- (a) Schedule 2 to the Shops (Registration and Opening and Closing Hours) Regulations, or
 - (b) Schedule 1 to the Shops (Trading Hours) Regulation 1992,
- continues to be a reference to the class of shops so referred to as if those Regulations had not been repealed.

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Schedule 1 Trades taken to be usually carried on in certain shops

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(Clause 5)

Classes of shops	Kinds of goods
Audio shops	Records, compact discs or blank or pre-recorded audio cassettes or audio tapes
Book shops	Books, periodicals or magazines, whether or not sold in conjunction with the sale of stationery requisites
Chemists' shops	Drugs, chemicals, medicines or other pharmaceutical goods, where sold by a registered pharmacist under the <i>Pharmacy Act 1964</i>
Confectioners' shops	Confectionery
Cooked food shops, king:	
(a) Cake and pastry shops	Cakes, pastries or pies
(b) Cooked provision shops	Cooked or other processed meats, poultry or preserves
(c) Refreshment shops	Light refreshments, milk, soft drinks, hot beverages or confectionery
(d) Restaurants	Meals, snacks or hot or cold beverages, where sold for consumption on the premises
(e) Take-away food shops	Meals, snacks or hot or cold beverages, where sold for consumption elsewhere than on the premises
Fish shops	Cooked or uncooked fish or shellfish
Flower shops	Cut flowers, plants, seeds, seedlings, wreaths, bouquets or other floral emblems
Fruit and vegetable shops	Fresh fruit or vegetables
Garden plant shops	Garden plants or shrubs, seeds, garden equipment or associated products

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Schedule 1

Classes of shops	Kinds of goods
General shops	Any goods other than those prescribed in respect of any other class of shops specified in this Schedule
Newsagencies	Newspapers, periodicals and magazines, whether or not sold in conjunction with the sale of books, stationery, cards, educational requisites or souvenirs
Pet shops	Live animals, birds, reptiles, fish, pet food or pet accessories
Souvenir shops	Souvenirs and gift items
Tobacconists' shops	Tobacco, cigarettes or cigars, whether or not sold in conjunction with the sale of pipes or other smoking requisites or accessories
Vehicle service shops	Motor spirit, motor oil or vehicle accessories
Vehicle shops	Cars, trucks, motorcycles, boats, caravans or trailers, whether or not sold in conjunction with the sale of accessories or parts
Video shops	Blank or pre-recorded video cassettes or video tapes